



July 6, 1999

Mr. Randall W. Morse
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR99-1866

Dear Mr. Morse:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125967.

The Fort Bend County Sheriff's Department (the "department") received a written request from an attorney for records pertaining to a drug raid during which the requestor's clients were allegedly injured. You seek to withhold the requested information pursuant to sections 552.103 and 552.108 of the Government Code.

To secure the protection of section 552.103(a), the "litigation" exception, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). Although you state that the requested records pertain to pending criminal litigation, we note that the department would not be a party to that litigation.

You also suggest that the requested records relate to reasonably anticipated civil litigation against the department. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* You have not made such a showing here. Consequently, the department may not withhold any of the requested information pursuant to section 552.103.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere

with the detection, investigation, or prosecution of crime.” Based on your representation that the criminal prosecution of the drug charges is pending, we conclude that the department may withhold most of the information pertaining to the raid pursuant to section 552.108(a)(1).

We first note, however, that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department must release these types of information, including a detailed description of the offense, in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We also note that among the documents you seek to withhold is an executed search warrant and the accompanying affidavit. It is well established that information specifically made public by law outside the Texas Public Information Act may not be withheld pursuant to any of the act’s exceptions to required public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed* [Emphasis added.]

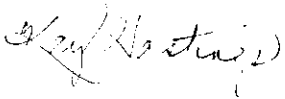
See also Houston Chronicle Publishing Co. v. Woods, 949 S.W.2d 492 (Tex. App.--Beaumont 1997, orig. proceeding). Accordingly, the department must release the search warrant affidavit. Similarly, any of the other records at issue, such as the search warrant itself, that have been publicly filed with a court in connection with the pending prosecution may not be withheld from the public pursuant to section 552.108. *Cf. Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected from public disclosure pursuant to common-law privacy).

Finally, among the documents submitted to this office are photographs of the requestor’s clients. These records do not relate to the criminal prosecution and therefore may not be withheld pursuant to section 552.108. The department must release these photographs to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay H. Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/eaf

Ref.: ID# 125967

Encl. Submitted documents

cc: Mr. Carlos A. Leon
Manuel E. Solis & Associates, L.L.P.
6657 Navigation
Houston, Texas 77011
(w/o enclosures)